IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1291 of 2004 (M/S)

St. James School Society,
Ward No. 3, Church Road,
P.O. Vikas Nagar,
District Dehradun & others

..... **Petitioners**

Versus

Civil Judge (Junior Division),
Dehradun and others

..... **Respondents**

AND

Civil Writ Petition No. 1294 of 2004 (M/S)

St. James School Society,
Ward No. 3, Church Road,
P.O. Vikas Nagar,
District Dehradun & others

..... Petitioners

Versus

Civil Judge (Junior Division) Dehradun
& others

..... Respondents

Mr. Alok Singh, Senior Advocate assisted by
Mr. Gopal Narayan, learned counsel for the petitioners.

Hon'ble Prafulla C. Pant, J.

By means of these petitions, moved under Article 227 of the Constitution of India, the defendants have challenged the order dated 03.11.2001 passed by learned Civil Judge (Junior Division), Dehradun in original suit No.800 of 1988.

2) Heard learned counsel for the petitioners. Perusal of the impugned order (copy Annexure-3 to the petition) shows that preliminary issue Nos. 10 and 11 relating to valuation of court fee, and that of jurisdiction, respectively are decided in negative by the trial court i.e. against the defendants. The finding on issue No. 10 suffers from no illegality as the right of trustee institute cannot be valued in terms of money and notional valuation pleaded by the plaintiff was rightly accepted by the trial court. However, as to the finding on issue No. 11, Section 16 of U.P. Basic Education Act, 1972, reads as under:

> *"16. Bar of jurisdiction of Court:- no order or decision made by the Board or any of its Committess in exercise of powers conferred by or under this Act, shall be called in question in any court."*

Learned trial court has decided the issue in negative on the ground that only the lawful orders passed by the Board cannot be questioned in the court.

3) Learned trial Court is silent as to how relief B in the plaint does not hit the Section 16 of above mentioned Act.

4) This Court is not inclined to entertain the petition under Article 227 of the Constitution of India as it would further delay the trial of 15 years old civil suit pending before the trial court, therefore, both the petitions are dismissed in limine with the observation that the finding on issue No. 11 can be challenged by the defendant after final disposal of the suit, in case if the same is decreed against them.

(Prafulla C. Pant, J.)

Dt: 14.12.2004
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